

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA

FILED

JAN 30 2006

MICHAEL RALPH CONROY,)
)
Plaintiff,)
)
vs.)
)
LUKE DUEL and OLGA N. CONROY,)
)
Defendants.)

ROBERT D. DENNIS, CLERK
U.S. DIST. COURT, WESTERN DIST. OF OKLA.
BY BS DEPUTY

No. CIV-05-1237-W

ORDER

On January 4, 2006, United States Magistrate Judge Bana Roberts issued a Report and Recommendation in this matter and recommended that the complaint filed by plaintiff Michael Ralph Conroy be dismissed. Conroy was advised of his right to object, but no objections to the Report and Recommendation were filed within the allotted time.

In his complaint, Conroy has sought relief against both defendants, Luke Duel and Olga N. Conroy ("O. Conroy"), under title 42, section 1983 of the United States Code, and upon de novo review of Conroy's allegations, the Court concurs with Magistrate Judge Roberts' suggested disposition of this matter.

Defendant Duel is an assistant district attorney for Logan County, Oklahoma. To the extent he is sued in his individual capacity, he is entitled to absolute prosecutorial immunity since his actions about which Conroy has complained "occur[red] in the course of his role as an advocate for the State." Buckley v. Fitzsimmons, 509 U.S. 259, 273 (1993). Furthermore, the eleventh amendment to the United States Constitution bars Conroy's claims against Duel to the extent, if any, Duel is sued in his official capacity as assistant district attorney. Accordingly, all claims against Duel should be dismissed. E.g.,

28 U.S.C. § 1915A(b)(2) (dismissal of complaint warranted when plaintiff "seeks monetary relief from a defendant who is immune from such relief").

Conroy's claims against his wife, defendant O. Conroy, likewise fail. Conroy has not shown that O. Conroy was acting under color of state law as required to state a claim for relief under section 1983. There are no allegations that establish that O. Conroy's conduct about which Conroy has complained is fairly attributable to the state, and Conroy's unsupported allegation of conspiracy between the two defendants is insufficient. Dismissal of these claims is therefore also required. E.g., 28 U.S.C. § 1915A(b)(1) (dismissal warranted when complaint "fails to state a claim upon which relief may be granted").

Because Conroy has failed to advance an actionable claim against either defendant and because he has not shown his entitlement to any relief he requested in his complaint, the Court

- (1) ADOPTS the Report and Recommendation issued on January 4, 2006; and
- (2) pursuant to title 28, section 1915A of the United States Code, DISMISSES Conroy's complaint file-stamped October 21, 2005.

ENTERED this 30th day of January, 2006.



LEE R. WEST
UNITED STATES DISTRICT JUDGE